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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/398,842 09/17/99 YOUNG

T 6900R

EXAMINER

QM12/0119

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ART UNIT

PAPER NUMBER

3761

DATE MAILED:

01/19/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/398,842

Applicant(s)

YOUNG ET AL.

Examiner

Paul A Shanoski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Cekin
GLENN K. DAWSON
PRIMARY EXAMINER

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: in numerous places, the specification lists the abbreviation "BM", without ever defining this abbreviation.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the word "having" in the final paragraph of the claim is grammatically incorrect, and each occurrence should be replaced with "has".

Regarding claims 7 and 20, the phrase "effective amount" in the first and last paragraphs of the claims, respectively, is indefinite, as one of ordinary skill in the art would not be able to read this term and arrive at a specific amount.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 15, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Foreman (4,738,677).

Foreman teaches an absorbent article having a chassis, comprising a backsheet, a topsheet, and an absorbent core between the two (Fig. 2 and column 3, lines 35-40); a nonwoven cuff joined to the chassis having two sides (column 3, lines 43-47 and Figures 1-3), comprising mettalocene polypropylene spunbond fibers in the absence of meltblown fibers, these spunbond fibers having a denier of less than 1.3 and a hydrostatic head of less than 85 mm (column 11, lines 1-12 teaches that Celestra is the preferred type of material to be used for the gasketing cuffs, which is the same preferred embodiment set forth in Applicant's specification, from which this claim derives support)

Regarding claim 15, see Figures 1-3.

Regarding claim 17, see Figures 1-3 and column 5, lines 61-65.

Regarding claim 18, see Figures 1-3.

Regarding claim 19, see Figures 2-3.

Claims 1-6, 15, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lawson (4,695,278).

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Lawson teaches an absorbent article having a chassis, comprising a backsheet, a topsheet, and an absorbent core between the two (Fig. 2 and column 3, lines 24-27); a nonwoven cuff joined to the chassis having two sides (column 3, lines 31-35 and Figures 1-4), comprising metallocene polypropylene spunbond fibers in the absence of meltblown fibers, these spunbond fibers having a denier of less than 1.3 and a hydrostatic head of less than 85 mm (column 9, lines 1-12 teaches that Celestra is the preferred type of material to be used for the gasketing cuffs, which is the same preferred embodiment set forth in Applicant's specification, from which this claim derives support)

Regarding claim 15, see Figure 4.

Regarding claim 17, see Figure 3.

Regarding claim 18, see Figure 3.

Regarding claim 19, see Figures 2-4.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-7 and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foreman, as applied to claims 1-6, 15, and 17-19 above, and further in view of Buckingham (4,556,560).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Foreman teaches the invention substantially as claimed, except for the application of a skin care composition to the gasketing cuffs, as well as the specific types of emollient used (regarding claims 1-6, 15, and 17-19 which pertain to the structure of the article, see the rejection above under 35 USC 102(b)). Buckingham teaches that is old in the art to implement a skin care composition consisting of petrolatum or zinc oxide (which is a semi-solid or a solid at 20 degrees Celsius and is at least partially transferrable to a wearer's skin) for treating diaper rash (column 3, lines 10-50); and the reference teaches that these compositions are to be applied to the skin

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contacting portions of the article (column 15, lines 13-15 and claim 22). One of ordinary skill in the art is determined to be one of ordinary skill in the art of absorbent articles, particularly diapers. One of ordinary skill in the art would have been able to read the teachings of Buckingham and discern that in order to cut down on diaper rash, it would be advantageous to add skin care compositions to the portions of the article which contact the skin of the wearer. One of ordinary skill in the art would realize that the gasketing cuffs contact the skin of the wearer, and hence one of ordinary skill in the art of absorbent articles would have been motivated to apply the teachings of Buckingham to the structure of Lawson and apply the lotion to the gasketing cuffs so as to cut down on diaper rash, and arrive at Applicant's invention.

Regarding claims 13-14 and 16, it is inherent that if one of ordinary skill in the art wanted to apply the lotion to the gasketing cuffs so that they would contact the skin of the wearer, the lotion would be applied to the side of the cuffs which contact the skin the wearer, and this lotion would spread to the other surface of the cuff.

Claims 1-7, 9-11, and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawson as applied to claims 1-6, 15, and 17-19 above, and further in view of Roe (5,607,760).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Lawson fails to set forth a skin care composition comprising 10-95% emollient and 5-90% of an immobilizing agent (regarding claims 1-6, 15, and 17-19 which pertain to the structure of the article, see the rejection of these claims in the 102(b) section above). Roe teaches a disposable article having gasketing cuffs having a lotion applied to them which is from 10-95% an emollient having a plastic or fluid consistency at 20 degrees Celcius and is from 5-90% an agent capable of immobilizing the emollient on the cuff (column 25, lines 25-31 and claim 1). One of ordinary skill in the art is determined to be one of ordinary skill in the art of absorbent articles, particularly diapers. As both references teach the construction of absorbent articles having gasketing cuffs, one of ordinary skill in the art would have been motivated to consult the two references before constructing an absorbent article which contains gasketing cuffs. One of ordinary skill in the art would have been motivated to implement the teachings of applying lotion to the gasketing cuffs of Roe to the structure taught be Lawson, as Roe teaches that this is one method of reducing diaper rash, and in doing so, one of ordinary skill in the art of absorbent articles would arrive at the claimed invention.

Regarding claims 10-11, see Roe, columns 15-16, lines 62-34, respectively.

Regarding claims 13-14 and 16, it is inherent that if one of ordinary skill in the art wanted to apply the lotion to the gasketing cuffs so that they would contact the skin of the wearer, the lotion would be applied to the side of the cuffs which contact the skin the wearer, and this lotion would spread to the other surface of the cuff.

Claims 1-8, 12, 15, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawson as applied to claims 1-6, 15, and 17-19 above, and further in view of Ducker et al. (5,938,649).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Lawson fails to set forth a skin care composition comprising aloe (regarding claims 1-6, 15, and 17-19 which pertain to the structure of the article, see the rejection of these claims in the 102(b) section above). Ducker sets forth that it is old and well known in the art to apply petrolatum (which is a semi-solid at 20 degrees Celsius) and aloe to the cuffs of a diaper so as to decrease rashes (abstract, column 2, lines 13-16, and columns 5-6, lines 66-4, respectively, column 7, lines 9-11, as well as claims 1-41). Ducker fails to teach that the cuffs of the diaper should have a denier of less than 1.3 and a hydrostatic head of at least 85 mm. One of ordinary skill in the art is determined to be one of ordinary skill in the art of absorbent articles, particularly diapers. As both references teach the construction of absorbent articles having gasketing cuffs which are coated with a rash preventing solution, one of ordinary skill in the art would have been motivated to consult the two references before constructing an absorbent article which contains gasketing cuffs that are coated with a rash preventing solution. One of

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ordinary skill in the art would have been motivated to implement the teachings of applying aloe and petrolatum to the gasketing cuffs as taught by Ducker to the structure taught by Lawson, as Ducker teaches that this is one method of reducing diaper rash, and in doing so, one of ordinary skill in the art of absorbent articles would arrive at the claimed invention.

Regarding claim 8, see Ducker, claims 1-3 and column 2, lines 43-47.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Van Rijswijck et al. (6,120,488); Roe (5,609,587; 6,120,782, and 5,957,906); Ducker et al. (5,938,649 and 5,944,705); Vega et al. (6,153,209); Nakahata (5,873,868) (lotioned skin contacting area) as well as Dragoo (4,795,454) and Robertson (5,026,364) (Celestra gasketing cuffs).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Shanoski whose telephone number is (703) 305-0560. The examiner can normally be reached on M-F, 7:30-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for unofficial communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is

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(703) 308-0858.



Paul Shanowski
1/16/2001



GLENN K. DAWSON
PRIMARY EXAMINER